IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

WRIT PETITION NO : 9142 of 1994

Between:

M/s. A.V.R. & Company, rep., by Sri A. Venkateswara Rao,

Managing Partner, 10-1-30, Waltair, Upland Vizag-3

..... PETITIONER

AND

1.The Authority under Section-48 of the A.P. Shops & Establishment Act 1988
(Assistant Commissioner of Labour I Circle Vizag).
2.Sri Kalikatla Suryanarayana S/o. K.Ramana, Ex. Watchman,

Thativeedhi, Maharanipeta, Vizag

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ order or direction declaring the action of the 1st respondent in allowing FAMP 1 of 1994 by the order dt: 23-4-1994 as illegal, arbitrary unjust contrary to law and provisions of the A.P. Shops and Establishments Act 1988 and the rules made thereunder.

For the Petitioner: MR.C.V.MOHAN REDDY, ADVOCATE

For the Respondent No.1: GP FOR LABOUR (NOT PRESENT)

For the Respondent No.2: MR.GOPALAKRISHNA KALANIDI (NOT PRESENT)

The Court made the following:

ORAL ORDER:

Heard the learned counsel for the petitioner.

2. The learned Government Pleader for the first respondent and the learned counsel for the second respondent are not present and there is no representation on behalf of the respondents.

3. Aggrieved by the condonation of delay of more than 19 years in filing an appeal under Section-48 of the A.P. Shops and Establishments Act, 1988 (For brevity “The Act”), by the second respondent-workman, the present writ petition has been filed.

4. The petitioner is the management, the first respondent is the authority under the Act and the second respondent is the workman.

5. For the sake of convenience, the petitioner, the first

respondent and the second respondent will be referred to as “the management, the Authority under the Act and the workman” respectively.

6. From the affidavit filed in support of the application, seeking condonation of delay of 19 years in filing an appeal under Section-48 of the Act, it could be seen that no satisfactory reasons were assigned. But, however, the Authority under the Act had exercised its discretionary jurisdiction and condoned the said delay.

7. The impugned proceedings effecting the services of the workman were of the year 1975. No plausible explanation was put forth by the workman in approaching the authority under the Act after a lapse of 19 years. The limitation for filing an appeal is prescribed as 60 days. But, however, the Authority under the Act can exercise its discretionary jurisdiction.

8. But, it is to be noted that such exercise of discretionary jurisdiction in condoning the delay should be on justifiable grounds only. Further, it is to be seen that nearly after two decades it is very difficult for the management to explain the circumstances under which the services of the workman were effected. In all probability, it would be very difficult to produce any evidence also in this regard after so many years. The Authority under the Act, in my considered view, had failed in considering these aspects. Though it is strictly not attracted by the principles of laches, in view of the other factors that would virtually make the management incapable of establishing its case and also in view of no plausible explanation forth coming, the action of the Authority under the Act, in my considered view, in condoning such an extraordinary delay is wholly unwarranted.

9. For the foregoing, the impugned order, dated 23-04-1994, passed by the Authority under the Act, is liable to be set aside.

10. In the result, the writ petition is allowed and the impugned order, dated 23-04-1994, passed by the Authority under the Act/first respondent herein, is set aside. However, there shall be no order as to costs.

D.S.R.VARMA, J

04TH NOVEMBER 2004

KRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday the Fourth Day of July, Two Thousand and Four.

To:

1.The Authority under Section-48 of the A.P. Shops & Establishment Act 1988 (Assistant Commissioner of Labour I Circle Vizag).
2.Sri Kalikatla Suryanarayana S/o. K.Ramana, Ex. Watchman, Thativeedhi, Maharanipeta, Vizag.

3.Two CCs to the Government Pleader for Labour, High Court Buildings, Hyderabad (OUT).

4.Two CD copies.